

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Broadcast Localism

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MB Docket No. 04-233

To: The Commission

REPLY COMMENTS OF UNIVISION COMMUNICATIONS INC.

Univision Communications Inc. (“Univision”), by its counsel, hereby submits its Reply Comments in the above-captioned proceeding in response to the Commission’s Notice of Inquiry. *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 (2004) (“NOI”). As predicted by Univision in its Comments, evidence of broadcasters’ service to their local communities is in ample evidence in this proceeding.¹ These diverse and far-ranging efforts, adapted by each station to the particular needs of its own local community, have for many decades made local broadcast stations one of the most respected community resources. While certain commenters want broadcasters to do more of a specific activity or less of another in accordance with the commenters’ personal interests, the public interest record and community involvement of broadcasters revealed in this proceeding is outstanding, and the proponents of additional “localism” regulations are urging a harmful solution for which there is no underlying

¹ See, e.g., Comments of Belo Corp.; Comments of Bonneville International Corporation; Comments of Citadel Broadcasting Company; Comments of Fox Television Stations, Inc. and Fox Television Holdings, Inc.; Comments of Gannett Broadcasting; Comments of Joint Broadcasters; Joint Comments of the Named State Broadcasters Associations; Comments of the National Association of Broadcasters; Comments of The Radio - Television News Directors Association; Comments of Univision Communications Inc.; Comments of Viacom; and Comments of The Walt Disney Company.

problem. Given the already extensive evidence in the record of broadcasters' localism efforts, Univision submits these Reply Comments for the limited purpose of clarifying the record with regard to two specific issues.

I. An Overwhelming Majority of Americans Report That Their Local Broadcast Stations Are Doing a Good or Very Good Job of Serving Their Local Communities

Relying on results from an October 21, 2004 survey commissioned by the Consumers Federation of America and Consumers Union ("CFA/CU"), CFA/CU state that "there was generally widespread support for public responsibilities for broadcasters."² Of course, this vague statement is not particularly helpful, as the Communications Act and the Commission's rules currently impart many "public responsibilities" to broadcasters, and no broadcaster has suggested that it does not have responsibilities to the public. CFA/CU's Comments then discuss various other survey responses, and includes as Exhibit 4 a summary of the survey questions and responses.

A question not discussed in CFA/CU's Comments which would be far more revealing is how good of a job the public thinks broadcast stations are doing in meeting their programming responsibilities. Fortunately, the CFA/CU survey asked that very question.³ Oddly, however, the question and the public's response to it are entirely missing from CFA/CU'S Comments, even though it is without a doubt the single most pertinent question to this proceeding.⁴

² Comments of the Consumer Federation of America and Consumers Union, Attachment at A 11.

³ See CFA/CU October 21, 2004 Study, Table 6, Page 5 (attached hereto as Exhibit A) *available at* <http://www.consumersunion.org/pub/campaignmedia/001453.html> (last visited Jan. 3, 2005).

⁴ Comments of the Consumer Federation of America and Consumers Union, Attachment at A 9-11.

As noted in Univision's Comments,⁵ the October 21, 2004 survey asked respondents: "In your opinion, how well do you feel your local TV stations do in producing or airing programs that serve the needs of your community?"⁶ An overwhelming majority, 77%, said that their local TV stations did a good or very good job of providing such programming.⁷ In order for the Commission to have a fully formed record in this proceeding, Univision believes it important that this information be associated with the other survey responses discussed by CFA/CU in their comments. Univision also believes that this survey response fills an important gap in the record, as it provides a direct link between the ample evidence in this proceeding of stations' efforts to serve local needs and interests, and the public's overwhelmingly positive regard for their local stations resulting from those efforts.

II. The Commission Should Reject the Distorted Definition of "Localism" Being Proffered by EchoStar, Who Is Attempting to Use This Proceeding to Achieve Its Own Benefit Rather Than the Public's Benefit

As discussed extensively in Univision's Comments, no two communities are identical, and broadcasters continuously adapt their operations to meet the ever-changing needs of their own local community. Tailoring a station's broadcast and non-broadcast activities to the needs of a specific community necessarily involves assessing the community's ability to economically support those efforts on a sustained basis. To do otherwise would result in a very short term view of localism, to the detriment of long-term broadcast service. Thus, while some would suggest that each and every station be required to air a certain amount of news or public affairs

⁵ Comments of Univision Communications Inc. at 2 n.1.

⁶ CFA/CU October 21, 2004 Study, Table 6, Page 5 (attached hereto as Exhibit A).

⁷ *Id.*

programming each week,⁸ stations in small markets or with specialized formats might not be able to economically sustain such programming, forcing such stations to go dark. No local community would benefit from such a perverse “public service” requirement, which could ultimately leave a community without broadcast service at all.

This is not to say that stations in smaller markets or with specialized programming are exempt from serving the needs of their local communities, but merely recognizes that the broadcaster must be afforded the flexibility to meet those needs in the best manner it can within the constraints of operating a sustainable broadcast service. Ignoring this bit of commonsense, EchoStar Satellite, L.L.C. (“EchoStar”) proposes that all television stations meet a minimum requirement for locally produced programming, or be deprived of satellite carriage in the local market as a penalty. While such an irrational approach would obviously benefit EchoStar, who apparently seeks any excuse not to carry local stations on its system,⁹ it would be extremely

⁸ See, e.g., Comments of Capitol Broadcasting Company at 4-5; Comments of EchoStar Satellite, L.L.C. at 20-23. Capitol Broadcasting Company proposes that licensees be required to air two hours of public affairs programming, including one hour of local public affairs programming and 110-150 PSAs per week, half of which should be locally produced and oriented. As discussed in Univision’s Comments, because many stations exceed these requirements now, such mandatory minimums could well result in a diminution in the amount, diversity, and quality of local programming and PSAs by incentivizing broadcasters to program to the minimum as opposed to responding to the actual needs of their communities. See Univision Comments at 20-21.

⁹ Univision submits that EchoStar’s Comments appear to be merely a new tactic in its long effort to avoid fulfilling its legal obligation to carry all stations in a local market on a nondiscriminatory basis as required by the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”), and should be considered in this light. After unsuccessfully challenging this requirement in court, *Satellite Broad. & Communs. Ass’n v. FCC*, 275 F.3d 337 (4th Cir. 2001), EchoStar initiated a war of attrition with local stations that it did not wish to carry by throwing every conceivable obstacle, including fictitious ones, into the path of stations seeking carriage. Thus when broadcast stations sent their must-carry election letters to EchoStar seeking carriage consistent with the Commission’s rules, EchoStar denied virtually every must-carry election without basis, responding with a form letter that dismissively claimed, without any factual support, that the station had failed to demonstrate adequate signal strength, duplicated the Footnote continued.

counterproductive for the public, as a station that is economically unable to produce the required amount of local programming while maintaining long term financial viability will certainly not have that situation improved by being forcibly separated from its local viewers (and its economic support) by a satellite gatekeeper, particularly given the high penetration of satellite television service in smaller rural markets. Once again, the result may often be termination of broadcast service, which benefits no one (with the apparent exception of EchoStar, which would simultaneously reduce both its carriage obligations and its broadcast competition).

It is no accident that the boom in putting new television stations on the air in the mid to late 1980s and early 1990s, which paved the way for the introduction of numerous new broadcast networks, occurred only after the Commission permitted stations more flexibility in assessing

programming of another local station, or failed some other EchoStar requirement. In September 2001, the Commission required EchoStar to cease this practice, finding that EchoStar's blanket rejection and claimed rationales were "not a valid reason for rejecting a request for mandatory carriage" and that EchoStar's actions were "not consistent with the SHVIA or our rules." *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, Order on Reconsideration, 16 FCC Rcd 16544, 16573 (2001).

EchoStar then segregated independent, public television, and Spanish-language stations from the major network affiliated stations by placing these "disfavored" stations on a secondary satellite—the same satellite on which it attempted to relegate its public interest channels before that plan was also found to violate Commission regulation. *See American Distance Education Consortium Request for an Expedited Declaratory Ruling and Informal Complaint*, Declaratory Ruling and Order, 14 FCC Rcd 19976 (1999). In addition to being more difficult to receive because it is lower in the sky, reception of the secondary satellite requires the installation of a second satellite dish. In 2002, the Media Bureau found that EchoStar's carriage scheme was in fact discriminatory and contrary to SHVIA. *In the Matter of Nat'l Ass'n of Broadcasters and Ass'n of Local Television Stations Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, Declaratory Ruling, 17 FCC Rcd 6065 (MB 2002).

In 2004, responding to EchoStar's continued carriage of many local stations on a secondary satellite, Congress specifically outlawed the practice. Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, Div. J, tit. IX, § 203(a) (amending Section 338 of the Communications Act of 1934). Having seen the writing on the wall, and now in the statute, and facing the prospect of actually complying with the law by eliminating segregated station carriage, EchoStar here seeks to create a new justification for being permitted to cherry-pick the local stations it wishes to carry.

and meeting the needs of their local communities. This flexibility made it possible to construct many new facilities that had previously been financially impractical, particularly where a “Big Three” network affiliation was not available. The result was many new broadcast stations for communities across the country, providing a broader diversity of programming. No better evidence exists that rigid localism requirements, while well-meaning, are in the end harmful to the very communities they are meant to benefit.

Beyond being counterproductive, the suggestion of a “one size fits all” local programming requirement ignores the fundamental distinction between the legal mandate of serving a station’s community of license, and merely airing locally-produced programming. “Localism” and airing locally-produced programming are far from synonymous. Airing a local program indicates nothing about the program’s ability to meet the needs of the community, and is instead merely a descriptor of the geographic location of the production studio. While locally produced programming *that meets the needs of the community* is certainly one important way in which broadcasters can serve their local communities, as detailed in Univision’s Comments,¹⁰ locally produced programming is by no means the only way. Nationally produced programming *that meets the needs of the community* is certainly more beneficial than locally produced programming that does not, and both the Commission and the United States Court of Appeals for the D.C. Circuit have held that broadcast licensees may satisfy their public interest duty to serve their local community by providing non-locally produced programming.¹¹

¹⁰ Comments of Univision Communications Inc. at 8-20.

¹¹ *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 104 FCC 2d 358, ¶ 15 (1986) (“coverage of local issues does not necessarily have to come from locally produced programming”) citing *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413, 1430 n.54 (1986) and *Revision of Programming and Commercialization Policies*, Footnote continued.

However, bent upon finding yet another excuse for avoiding its station carriage obligations, EchoStar ignores the law and misstates the facts in an effort to achieve its ends. Completely discounting the myriad other ways in which broadcasters are permitted to demonstrate service to their local communities, EchoStar argues that it should not be required to carry on its satellite system local television broadcast stations that do not air some minimum level of local programming deemed sufficient by EchoStar.¹² However, even if the Commission were not already foreclosed by statute from making satellite carriage contingent upon a station's programming, no rational basis exists for connecting satellite carriage to the geographic location of a station's program production. More importantly, if a station has chosen, or is economically forced, to serve its local community in other ways, undercutting that station's ability to reach its local viewers serves no one's interests but EchoStar's.

Having the Commission focus exclusively on local program production tells it no more about whether a station is meeting the needs of its local community than having a blindfolded man describe an elephant by examining its tail. Having advocated this fallacious standard for determining a station's commitment to localism, EchoStar proceeds to engage in an extended attack upon broadcast stations for failing to meet EchoStar's local production standards. In seeking to make its case under this flawed standard, EchoStar blends speculation with fabrication to declare a dearth of local broadcast programming in America. While Univision must leave it to other broadcasters to correct the record with regard to those broadcasters' stations, Univision is

Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, 98 FCC 2d 1076, n.28 (1984) ("Moreover, as the Commission has noted in other contexts, the coverage of local issues does not necessarily have to come from locally produced programming. See *Deregulation of Radio*, 84 FCC 2d 968, 999 (hereinafter "Deregulation of Radio"). See also *In re WPIX, Inc.*, 68 FCC 2d 381, 402 (1978) (premise that local needs can be met only through programming produced by a local station lacks presumptive validity).").

¹² Comments of EchoStar Satellite, L.L.C. at 19-23.

compelled to address EchoStar's incorrect claim that eleven Univision stations (most of which are TeleFutura network stations) currently carried on EchoStar's secondary satellite "air absolutely no local public affairs or news programming." However, *all eleven of the Univision stations named by EchoStar air local content, with ten of the eleven airing local news or public affairs programming.* Among the more notable local programs "missed" by EchoStar are the Emmy-nominated *Nuestra Georgia*, a local public affairs program aired on WUVG-TV, Atlanta, Georgia and *Primera Plana*, which airs on WXFT-TV, Aurora, Illinois and which was awarded the third prize Silver Dome Award for Best Locally Produced Public Affairs Program by the Illinois Broadcasters Association in 2004.

In short, EchoStar is wrong on the law and wrong on the facts, and its comments in this proceeding are obviously not aimed at determining whether local communities are being adequately served by their broadcast citizens, but about eliminating an entirely unrelated requirement that EchoStar also serve the public interest by making broadcast stations available in their local communities on a nondiscriminatory basis.

CONCLUSION

The evidence before the Commission in this proceeding demonstrates that broadcasters are serving both the specific needs of their local communities and the public interest in general. Additional regulations promulgated in the name of localism are therefore not only unnecessary, but, as discussed in Univision's Comments, would also be counterproductive. Univision thus urges the Commission to retain its current regulatory model, which allows broadcasters the

flexibility to discern and meet the needs of their own local community, while establishing a necessary balance between meeting the short term needs of the public, and maintaining an economically viable broadcast operation that can continue meeting those needs for the long term.

Respectfully submitted,

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EXHIBIT A

**Table of Contents and Table 6, Page 5 from Consumer Federation
of America and Consumers Union October 21, 2004 Study**

**(*available at* [http://www.consumersunion.org /pub/campaignmedia/
001453.html](http://www.consumersunion.org/pub/campaignmedia/001453.html) (last visited Jan. 3, 2005))**

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**IN YOUR OPINION,
HOW WELL DO YOU FEEL YOUR LOCAL TV STATIONS DO IN PRODUCING OR
AIRING PROGRAMS THAT SERVE THE NEEDS OF YOUR COMMUNITY**

	TOTAL	US EXCLUDING SINCLAR MARKETS	SINCLAIR MARKETS
Total Answering	100	100	100
UNWEIGHTED TOTAL			
They do a very good job	13	13	13
They do a good job	64	63	66
They do a poor job	15	15	14
They do a very poor job	4	4	3
Don't know	4	4	3
NO ANSWER			